

Procl

DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES WASHINGTON, D.C. 20548

9831

FILE: B-194017

DATE: April 16, 1979

MATTER OF:

DLG-00067
Jets Inc.

[Protest Alleging Awardee of Set Aside Contract is Not A Small Business]

DIGEST:

- 1. SBA has been given exclusive authority to determine matters of small business size status for procurement purposes. Therefore, our Office will not review such questions.
- 2. Failure to properly complete Standard Form 28, Affidavit of Individual Surety, is matter of responsibility, not responsiveness, which may be corrected prior to award of contract.

On November 17, 1978, Chanute Air Force Base issued a solicitation for the procurement of full food services. The procurement was set aside for small business.

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protest was denied.

Six bids were received. The low bidder was allowed to withdraw because of a mistake in bid, and Worldwide Services, Inc. (Worldwide), became the low bidder. The contract was subsequently awarded to Worldwide.

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The solicitation required a bid bond in the amount of 20 percent of the bid price or \$3 million, whichever is less. Worldwide submitted a bid bond on standard form (SF) 24 in the proper amount. The chairman of the board of Worldwide and his wife also submitted SF 28, Affidavit of Individual Surety. Both affidavits showed a net worth in excess of the total penal amount of the bond. The chairman of the board listed bank stock on his affidavit valued at \$1,481,500.

Instruction 5 of SF 28 requires that an officer of a bank or trust company, among others, must certify the affidavit. The certification of the surety's assets must be based on the personal investigation of the certifying officer.

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Jets Inc. (Jets) bases of protests are as follows: since Worldwide's chairman of the board owns controlling interest in a bank, his controlled affiliate is not a small business. Thus, Worldwide is not a small business concern and, consequently, Worldwide is ineligible for award. Jets also contends that if the chairman of the board sold the bank stock, as he admits, his SF 28 is inaccurate. Moreover, the affidavit was not signed by an officer of a bank or other proper certifying officer. It follows, then, according to Jets, that the bond based thereon is invalid, and Worldwide's bid is nonresponsive. Also, the bulk of the assets listed by the sureties was undeveloped land, which was listed at its estimated market value. The estimated market value should be subject to further investigation by the contracting officer. *mirroring the bond*

In response to the contracting officer's inquiry, the chairman of the board stated in substance that he obtains an audited statement of net worth at the beginning of each fiscal year. The statement is used throughout the year to support bonds. The bank stock in question was sold after the preparation of the net worth statement used to support the bond in question. The net worth statement should have been changed to reflect the sale of the bank stock and the presence of the sales proceeds. However, even if the value of the stock or the sales proceeds were not considered, the chairman's net worth would exceed the total penal amount of the bond.

The Department of the Air Force (Air Force) contends that we have determined that the matter of a surety's net worth relates to a bidder's responsibility and not responsiveness of its bid and, hence, the contracting officer can inquire into the surety's net worth after bid opening. In this regard, the Air Force calls attention to Cassidy Cleaning, Inc., B-191279, April 27, 1978, 78-1 CPD/331, citing 54 Comp. Gen. 184 (1972). Also, section 10-201.2(d) (1976 ed.) of the Defense Acquisition Regulation (DAR) authorizes the contracting officer to obtain additional information from the surety after bid opening if there is reason

to believe that the SF 28 does not accurately reflect the surety's net worth. In the instant case, the contracting officer obtained a revised SF 28 and determined that the net worth exceeded the total penal amount by a wide margin. In fact, the revised SF 28 showed a net worth higher than the net worth as originally presented.

The Air Force correctly points out that a surety's net worth is a matter of responsibility. Cassidy Cleaning, Inc., supra. We have also held that whether SF 28 has been properly completed is a matter of responsibility. Jets Services, Inc.; Dynamic International, Inc.; Chemical Technology, Inc.; ABC Food Services, Inc.; Quality Maintenance Company, Inc., B-180554, June 6, 1974, 74-1 CPD 307.

In the instant case, it appears that there were deficiencies in the SF 28 as originally submitted, namely, the affidavit was not properly certified and the statement of assets was not accurate. However, the SF 28 was revised and properly certified before award. Since this is a matter of responsibility, we find no reason for rejecting Worldwide's bid. Moreover, the sureties properly completed and submitted SF 24, thus obligating themselves to the Government. While the protester contends that the estimated value of the surety's undeveloped land should be investigated, we find nothing in the record to indicate that the surety's net worth did not at least equal the penal sum of the bond, as required by DAR § 10-201.2(d) (1976 ed.).

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Further, Jets lodged a protest with the Small Business Administration (SBA), alleging that Worldwide was not a small business. SBA's regional office in Atlanta found Worldwide to be small. The matter of Worldwide's size was appealed to SBA's Size Appeals Board, which affirmed the determination of the regional office. With regard to whether Worldwide is a small business concern, we have held that SBA has been given exclusive authority to determine matters of small business size status for procurement purposes. Therefore, our Office will not review questions of bidders' small business size status. Sunshine Peninsula, Inc., B-184294, July 14, 1975, 75-2 CPD 33.

Under the circumstances, the protest is denied.

A handwritten signature in black ink, appearing to read "R. F. Keller". The signature is written in a cursive style with a large initial "R".

Deputy Comptroller General
of the United States